IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 35 OF 2007

IN

PUBLIC INTEREST LITIGATION NO. 36 OF 2003

Shri Tatyasaheb Kore Warana Sahakari
Sakhar Karkhana Ltd., .. Applicant.

vs.

Sharad Baburao Patil & Ors. .. Respondents.

Mr. K.K. Singhvi, Sr. Counsel i/by M/s. S.S. Patwardhan & A.B. Raju for Applicant.

Mr. V.A. Thorat, Sr. Counsel with Mr. S.S. Shah for respondent no.1.

Mr. A.L. Patki for respondent no. 2 with Mr.R.G. Pethe, Water Pollution Abatement Engineer, M.P.C. Board, Mumbai.

Mr. R.M. Patne, AGP., for State.

CORAM: J.N. PATEL &
V.M. KANADE, JJ.
DATE: 30TH OCTOBER, 2007.
(IN CHAMBER AT 2.45 P.M.)

P.C.

. Heard the learned counsel for the parties.

2. The applicant is original respondent no. 3 in the petition who has moved this Court for seeking permission to instal Web Scrubber system instead of "ESP" system in the applicant factory for the control of air pollution by suitably modifying the order passed by this Court on 5.3.2007 and relieve the applicant from its undertaking to install the "ESP" system for pollution control and instead be permitted to install the web scrubber system. In support of this application it has annexed various orders passed by this Court along with certain reports from the institutions which do recommend use of web scrubber system as a substitute for ESP System. In support of the application the applicant has also obtained the opinion of National Environmental Engineering Research Institute (NEERI) dated 12.9.2007 which is given by Dr. S.M. Tamhane, Dy. Director/Sr. Scientist, Air Pollution Control System. The expert from NEERI happened to inspect the factory and was of the opinion that in the given facts and circumstances it is recommended that M/s. WSSKL (Karkhana) i.e. the applicant may be permitted to install "Web Scrubber" (which is equally efficient as "ESP" in controlling particulate emissions to meet MPCB’s emission standard of 150 mg/Nm3), putting the party to certain conditions in the form of undertaking.

3. When this report was placed before the Court the petitioner took strong exception to it and submitted that the report of Dr. Tamhane from NEERI had been prepared without they being put on notice of the fact that Dr. Tamhane is going to inspect the Karkhana and without giving them an opportunity of hearing and that the Court may consider calling for another report of an expert body and suggested that IIT, Bombay has the faculty to give such report to this Court.

4. We granted leave to the applicant to approach IIT, Bombay and this Court was informed that Prof. Shyam R. Asolekar is the faculty in the field who can give his report if the Court calls for it. Accordingly, we passed an order requesting Prof. Shyam R. Asolekar to give his opinion in the matter after examining the issue and hearing the concerned parties. Accordingly, a report was forwarded to this Court by Prof. Shyam R. Asolekar under his letter dated 22.10.2007, copies of which are already furnished to the parties.

5. Mr. Singhavi, the learned Senior Advocate, appearing for respondent Karkhana submitted that Prof. Asolekar while giving his opinion in the form of report as exceeded his brief and he has failed to take into consideration various factors particularly in respect of the applicant Karkhana where the installation of

"ESP" is not feasible and it is common knowledge that WSS is adopted by various sugar karkhanas and it is equally effective as can be seen not only from the report submitted along with the application from Vasantdada Sugar Institute and is reenforced by the opinion of Dr. Tamhane from NEERI who is an independent expert and the Institution where Dr. Tamhane is working commands autonomy and its opinions are respected by the judiciary.

6. Mr. Singhavi, the learned Senior Advocate, strenuously contended that in the report of Dr. Asolekar it has been specifically highlighted that most of the sugar factories in Maharashtra have got multi-cyclone dust collector system and 6-8 have added WSS technology and thus only 2-3 karkhanas have got ESP system installed which was permitted at the time of their expansion and, therefore, why the applicant Karkhana should be discriminated.

7. Mr. Thorat, the learned senior advocate for the respondents, submits that the report of Prof. Asolekar is comprehensive and there is no reason why it should not be given due weightage as it considers all the facets of pollution and as the said faculty has given due hearing to all the parties and even after taking into consideration the opinion of Dr. Tamhane has submitted that wet scrubbing system (WSS) cannot be considered as equally sufficient/efficient in the

context of today's level of competence and sophistication of technology/service providers and the Warna Karkhana (and their consultants) and according to him, it is his considered opinion that the imminent problem of achieving the compliance at the Warna Karkhana can only be made possible if "ESP" is chosen as the suitable technology.

8. The contention of Mr. Singhavi, Senior Advocate, that the said Karkhana has been discriminated by insisting that they should adopt a "ESP" system cannot be accepted for the very reason that it on its own gave an undertaking to this Court that they would instal "ESP" system and mainly because the MPCB has permitted certain sugar units to have various other systems installed in their Karkhanas cannot be a justification to entitled the applicant Karkhana to have a choice in the matter which in the opinion of the experts will be hazardous to environment. That is why we reject the submission of Mr. Singhavi on this count.

9. We have given our anxious consideration to the opinion of the experts before us. We are of the view that the opinion and report of Prof. Asolekar deserves to be taken into consideration being more comprehensive and analytical compared to that of Dr. Tamhane and the issue cannot be compromised merely on the exigencies that the application made by the applicant Karkhana deserves consideration as the crushing season has

commenced and more than 22000 members are going to be affected and the sugar cane growers will ultimately suffer the loss.

10. In the given fact situation, the applicant Karkhana was well aware of the prevailing conditions and ought to have taken steps to abide by the undertaking given by them to this Court that they would instal ESP system in order to control pollution at their establishment. In the circumstances we are not inclined to entertain the application.

11. Before we part with the order, we may like to observe that it is now for the M.P.C.B. to give a serious thought to the report of Prof. Asolekar as a whole and take into consideration the summary and recommendations made by him in his report. Prof. Asolekar has also expressed that M.P.C.B. and C.P.C.B. may be given clear directive to initiate a long term study addressing compliance and operation related issues for the air pollution control devices in the sugar sector. It is hoped that such a study will collect data and experience on operation of ESPs, WSS, bag-filters as well as multi cyclone collectors. Emission of un-reacted sulfur dioxide from the bleaching units in the sugar production area has been a long standing problem in sugar sectors. These and many such issues should be investigated. We, therefore, expect a response from MPCB. We direct the MPCB to

forward a copy of the report to CPCB also so that the central authority can constitute a panel of eminent scientists and experts in the field and examine the problem as high-lighted by Prof. Asolekar in his report.

12. Further, we may like to record our appreciation for the efforts taken by Prof. Asolekar within such a short time and submit a comprehensive report on the issue which has facilitated us to have a clear perspective of the problem. With these observations and directions, we dismiss the application with costs.

13. The original petitioner Mr. Sharad Baburao Patil has filed an affidavit as directed by us on the last date. He has been threatened with dire consequences for raising this issue in the Court by way of public interest litigation and, therefore, he apprehends danger not only to his life but to that of his family members and further apprehends that their properties may be damaged and, therefore, he should be provided police protection. The learned AGP., has been served with a copy of the application. We request the learned AGP., to immediately transmit a copy of the application to the District Superintendent of Police, Kolhapur and I.G. Kolhapur Range. The District Superintendent of Kolhapur and I.G. Kolhapur Range shall examine the threat perception to the petitioner, his family members and their properties and would take

adequate preventive measures and extend necessary police protection so that no harm visits the petitioner, his family members or property. We make it clear that if the petitioner, his family members or his properties are affected in any manner by way of retaliation in moving this Court in public interest against the Karkhana, it will be the sole liability of the State to compensate the petitioner, his family members for the loss suffered by them, may be of life or property. The order be communicated forthwith through all modes of communications including wireless message to the two authorities and the copy be also forwarded to the Additional Chief Secretary, Home, Government of Maharashtra.

14. The Public Interest Litigation be listed before the Court for the response of the MPCB pursuant to the directions issued by this Court, immediately after Diwali Vacation, 2007.

15. The parties to act on authenticated copy of this order.

(J.N. Patel, J.)

(V.M. Kanade, J.)